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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION8  
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JUAN ALVARADO,

Petitioner,

No. C 12-3731 PJH (PR)

vs.

**ORDER OF DISMISSAL**

C. GIBSON, Warden,

Respondent.

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This is a habeas case brought pro se by a state prisoner. In the initial review order  
the court noted that petitioner had a previous case unsuccessfully attacking the same  
judgment, *Alvarado v. Small*, C 99-4228 SBA (PR). As a consequence, the petition here is  
a second petition. Because it appeared that petitioner had not obtained an order from the  
court of appeals allowing him to file a second petition, he was ordered to show cause why it  
should not be dismissed. See 28 U.S.C. § 2244(b)(3)(A).19  
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In response, petitioner contends that his claim comes within an exception to the ban  
on second petitions for new claims that rely on a new rule of constitutional law made  
retroactively applicable on collateral review by the Supreme Court. See 28 U.S.C. §  
2244(b)(2)(A). That exception, however, does not obviate the need for an order from the  
court of appeals allowing the petition to be filed, and petitioner does not contend that he  
has obtained such an order. See 28 U.S.C. § 2244(b)(3)(A) (permission from court of  
appeals must be obtained before filing second petition permitted under exceptions). The  
petition is **DISMISSED**. The clerk shall close the file.27  
IT IS SO ORDERED.28  
Dated: September 26, 2012.  
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PHYLLIS J. HAMILTON  
United States District Judge